

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EON-NET, L.P.,

Plaintiff,

V.

FLAGSTAR BANCORP, INC.,

Defendant.

CASE NO. C05-2129MJP

ORDER ON PLAINTIFF EON-NET'S MOTION FOR RECONSIDERATION RE: SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff's motion for reconsideration (Dkt. No. 75) of the Court's order on summary judgment (Dkt. No. 73). Pursuant to Local Rule 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the Court earlier, through reasonable diligence. Plaintiff Eon-Net, L.P. ("Eon-Net") claims the Court erred in granting summary judgment. The Court considers each argument below.

1. The Court Properly Granted Flagstar’s Motion for Summary Judgment of Non-Infringement.

Eon-Net contends that Flagstar sought summary judgment on one issue: license. Eon-Net contends it was denied the opportunity to argue claim construction, claim scope, and infringement. This contention is without merit. Flagstar sought summary judgment

1 “because the undisputed material facts preclude finding Flagstar liable for patent
 2 infringement.” See Def.’s Mot. for S.J. (Dkt. No. 39) at 6. Flagstar repeatedly argued
 3 that it was not liable for infringing the ’697 Patent. Id. Flagstar detailed its own internal
 4 investigation of products, software, and technologies, and its conclusion that none of its
 5 activities conceivably infringed the ’697 Patent, with the possible exception of the Kofax
 6 software which was licensed. Id. at 3. Flagstar sought summary judgment of non-
 7 infringement, arguing that there was no evidence of infringement for any technology not
 8 covered by a license agreement.

9 Eon-Net misunderstood its burden to show a genuine issue of material fact
 10 regarding infringement:

11 The moving party bears the initial burden to demonstrate the absence of a
 12 genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323
 13 (1986). Once the moving party has met its burden, *the opposing party must
 14 show that there is a genuine issue of fact*. Matsushita Elec. Indus. Co. v.
 15 Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). *The opposing party
 16 must present significant and probative evidence to support its claim or
 17 defense*. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551,
 18 1558 (9th Cir. 1991).

19 Aug. 11, 2005 order at 5 (Dkt. # 73) (emphasis added). Flagstar met its burden,
 20 demonstrating the absence of any material facts or evidence showing infringement. In
 21 response, Eon-Net conceded the issue of license and attempted to identify infringing
 22 software. See Pl.’s Opp’n at 2 (identifying “online banking services” and “Digital
 23 Insight” software as infringing products). However, it failed to identify facts to support
 24 its contention that a product actually infringed. Eon-Net failed to meet its burden as the
 25 party opposing summary judgment: it failed to present significant and probative evidence
 26 in support of its claim for infringement.

27 Flagstar moved for summary judgment of non-infringement. Eon-Net responded
 28 by pointing out that Flagstar provided online banking services. But that gesture raised no
 question as to whether Flagstar does anything to infringe the ’697 Patent. In reply,
 Flagstar pointed out the complete absence of any disputed issues of fact with regard to the

1 issues raised by Eon-Net in its opposition. Eon-Net's conclusory allegations of
2 infringement are insufficient to raise a genuine issue of material fact precluding summary
3 judgment. See Porter v. Farmers Supply Serv., Inc., 790 F.2d 882, 884-85 (Fed. Cir.
4 1986). The Court's grant of summary judgment of non-infringement was proper.

5 **2. The Court Did Not Improperly Limit the Scope of the '697 Patent.**

6 Eon-Net alleges that the Court should have adopted its proffered construction for
7 the '697 Patent. This argument is without merit. Eon-Net alleges that because the '697
8 contains a reference to "computer files from other computer systems" near the end of the
9 specification, the proper construction is extraordinarily broad. See '697 Patent at 15:26-
10 27. This reference, however, does not support Eon-Net's proffered construction. It also
11 does not cure Eon-Net's failure to demonstrate any genuine issue of material fact
12 regarding infringement. While the Court briefly considered Eon-Net's unsupported
13 position on the scope of the '697 Patent, summary judgment was appropriate based on its
14 failure to meet its basic obligations in opposition to Flagstar's motion for summary
15 judgment.

16 **3. Eon-Net Failed to Provide Any Evidence of Infringing Products or
17 Functionality.**

18 Eon-Net contends that it did not "change" its position on infringement: it always
19 believed that the form elements on the Flagstar website infringed the '697 Patent. The
20 Court did not grant summary judgment because Eon-Net changed its position. A party
21 can change its theory, but it must provide evidence on summary judgment to support its
22 theory. The Court granted summary judgment because Eon-Net failed to show that any
23 facts supporting its claim that Flagstar infringes the '697 Patent. Speculation about
24 product function is insufficient.

25 **4. Eon-Net Was Unable to Determine How The Flagstar Website Worked.**

26 Eon-Net's counsel argues that the Court mistakenly concluded that counsel didn't
27 know how the Flagstar website operated. However, the description of the pre-filing

1 investigation supports no other conclusion. See Zimmerman Decl. ¶¶ 9-10. Mr.
2 Zimmerman's description of the Flagstar website contains precious little detail. The
3 description of "Defendant's use of HTML forms and tags" in the motion for
4 reconsideration is so general that it could likely be applied to any website. However,
5 regardless of whether Eon-Net's counsel understood how the Flagstar website "worked,"
6 its briefing failed to do more than speculate about Flagstar's web operations. Speculation
7 is insufficient to support a claim for infringement, and insufficient to support its
8 opposition to summary judgment.
9

10 **5. The Kofax License Does Not Apply to Non-Kofax Software.**

11 Eon-Net's last argument is that the Court concluded that Kofax customers have a
12 non-exclusive irrevocable license to the '697 Patent, beyond Kofax software. This is
13 simply incorrect. The Court did not conclude that the Kofax license extended beyond
14 Kofax products.

15 **CONCLUSION**

16 Eon-Net has failed to show manifest error in the Court's prior ruling, and has
17 failed to show new facts or legal authority that were not addressed in the prior motion for
18 summary judgment. Accordingly, the motion for reconsideration (Dkt. No. 75) is
19 DENIED.

20 Dated this 27th day of September, 2006.

21
22 s/Marsha J. Pechman
23 Marsha J. Pechman
24 United States District Judge
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